



Memorandum Regarding 11/21/2022 CIRT Incident: LCSO #SO22-10249, LPD #LP22-9205, FCPS #FC22-16155, WPD #WP22-21168, CSU #CS22-1666.

Sheriff John Feyen,

The District Attorney's office has been asked to review the shooting of Justin Anderson on November 21, 2022, which occurred on North Fairgrounds Avenue north of East Crossroads Boulevard in Windsor, Colorado, to determine whether Larimer County Sheriff's personnel or any other parties violated any Colorado criminal statutes with respect to the shooting.

I. EXECUTIVE SUMMARY

Applying the law to the facts of this incident, as described in greater detail below, I conclude that Deputies Justin Napolitano, Jonathon Wedemeyer, and Jaime Smith were legally justified in their use of physical force, including deadly physical force, to defend themselves and other deputies from the threat posed by Justin Anderson on January November 21, 2022. Having concluded that these Deputies were each legally justified in their use of physical force, no criminal charges will be filed. My determination necessarily includes the assessment that there is no reasonable likelihood that any criminal charges could be proven unanimously beyond a reasonable doubt.

II. THE STATUTORY FRAMEWORK FOR OFFICER INVOLVED SHOOTING INVESTIGATIONS

C.R.S. §16-2.5-301 governs investigations into peace officer-involved shooting investigations. It provides, in relevant part:

Each police department, sheriff's office, and district attorney within the state shall develop protocols for participating in a multi-agency team, which shall include at least one other police department or sheriff's office, or the Colorado bureau of investigation, in conducting any investigation, evaluation, and review of an incident involving the discharge of a firearm by a peace officer that resulted in injury or death. The law enforcement agencies participating need not be from the same judicial district.

The investigation into this shooting incident was conducted by a multi-agency team consisting of personnel from agencies within the jurisdiction who are members of the district's Critical Incident Response Team (CIRT). Specifically, Fort Collins Police Services was the lead agency, and they were aided by other agencies including, the Loveland Police Department, Windsor Police Department, Larimer County Sheriff's Office, Colorado State University Police Department, and the District Attorney's Office.

C.R.S. § 20-1-114 provides:

The district attorney shall, if no criminal charges are filed following the completion of an investigation pursuant to section 16-2.5-301, C.R.S., release a report and publicly disclose the report explaining the district attorney's findings, including the basis for the decision not to charge the officer with any criminal conduct. The district attorney shall post the written report on its website or, if it does not have a website, make it publicly available upon request.

This document constitutes a report of the District Attorney's findings and includes the basis of the decision not to charge any involved peace officer with any criminal conduct.

III. MATERIALS REVIEWED

I have been provided materials produced during the CIRT investigation into the shooting of Anderson. The information I have considered includes:

- The body worn camera footage of the involved peace officers
- Reports/summaries of the CIRT investigators
- Recorded interviews of involved peace officers
- Computer aided dispatch reports and audio recordings of law enforcement radio traffic
- Photographic evidence
- Physical evidence (firearms, ballistics, etc.)
- Maps depicting the geographical area in which the events took place
- Ballistics analysis from the Colorado Bureau of Investigation

IV. APPLICABLE LAW

The District Attorney's review of this event is guided by the Colorado statutes pertaining to the use of force by peace officers, including the right to use self-defense. Deputies Justin Napolitano, Jonathon Wedemeyer, and Jaime Smith, and all other persons referred to as "deputies" or "peace officers" in this letter, are "peace officers" per statute. *See* §16-2.5-101-103, C.R.S.

By using their service weapons and shooting several times into Anderson's vehicle and causing his death, the deputies used force, and thus their conduct implicates Colorado's peace officer use of force and self-defense statutes.

Pursuant to C.R.S. §18-1-901(3)(d), "Deadly physical force" means force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact produce death. Therefore, the deadly force statutory language below is relevant to my conclusions regarding this event.

§ 18-1-707, C.R.S. (Use of force by peace officers—definitions), states in relevant part:

- (1) Peace officers, in carrying out their duties, shall apply nonviolent means, when possible, before resorting to the use of physical force. A peace officer may use physical force only if nonviolent means would be ineffective in effecting an arrest, preventing an escape, or preventing an imminent threat of injury to the peace officer or another person.
- (2) When physical force is used, a peace officer shall:
 - (a) Not use deadly physical force to apprehend a person who is suspected of only a minor or nonviolent offense;
 - (b) Use only a degree of force consistent with the minimization of injury to others;
 - (c) Ensure that assistance and medical aid are rendered to any injured or affected persons as soon as practicable; and
 - (d) Ensure that any identified relatives or next of kin of persons who have sustained serious bodily injury or death are notified as soon as practicable.
- (3) A peace officer is justified in using deadly physical force to make an arrest only when all other means of apprehension are unreasonable given the circumstances and:
 - (a) The arrest is for a felony involving conduct including the use or threatened use of deadly physical force;
 - (b) The suspect poses an immediate threat of death or serious bodily injury to the peace officer or another person;
 - (c) The force employed does not create a substantial risk of injury to other persons.
- (4) A peace officer shall identify himself or herself as a peace officer and give a clear verbal warning of his or her intent to use firearms or other deadly physical force, with sufficient time for the warning to be observed, unless to do so would unduly place peace officers at risk of injury or would create a risk of death or injury to other persons.
- (4.5) Notwithstanding any other provision in this section, a peace officer is justified in using deadly force if the peace officer has an objectively reasonable belief that a lesser degree of force is inadequate and the peace officer has objectively reasonable grounds to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving serious bodily injury.

§ 18-1-704, C.R.S., Colorado's general self defense statute, states in relevant part:

- (1) [A] person is justified in using physical force upon another person in order to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he may use a degree of force which he reasonably believes to be necessary for that purpose.

- (2) Deadly physical force may be used only if a person reasonably believes a lesser degree of force is inadequate and [t]he actor has reasonable ground to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving great bodily injury.

Under Colorado law, for a person to act legally to defend themselves or others requires the presence of “both reasonable belief and actual belief” on behalf of the actor. *See Sanchez v. People*, 820 P.2d 1103, 1108 (Colo. 1991). The law requires the fact finder to “weigh all relevant circumstances to determine whether a person asserting the defense of self-defense has acted as a reasonable person would act in similar circumstances.” *Id.*

V. SUMMARY OF LEGAL STANDARD AS APPLIED TO THIS EVENT

Distilling the various legal authority down to an applicable standard to apply to this event, we must determine:

- 1) Whether each deputy reasonably believed that the use of physical force – and degree of force employed - was necessary to defend themselves or others from what they reasonably believed to be the imminent, or continued, use of physical force by Anderson and
- 2) Would “nonviolent means ... [have been] ineffective in effecting an arrest, preventing an escape, or preventing an imminent threat of injury to the peace officer or another person” in this situation?

Additionally, the statute requires us to ask:

- 3) Did the deputies identify themselves as peace officers and give a clear verbal warning of their intent to use their firearm, with sufficient time for the warning to be observed, and if not, is she exempted from having given that warning because it would have unduly placed her or her fellow officers at risk of injury or would have created a risk of death or injury to other persons?
- 4) Did the deputies ensure that assistance and medical aid were rendered to Anderson as soon as was practicable?
- 5) Did the deputies or others ensure that any identified relatives or next of kin of Anderson, if he sustained serious bodily injury, were notified as soon as practicable?

VI. SUMMARY OF RELEVANT FACTS

The following factual overview is derived from the interviews of involved peace officers and the results of additional investigation performed by members of the CIRT. Additional findings from body worn camera footage and other evidence is discussed below.

Attempt to Contact and Pursuit

On November 21, 2022, at about 00:08 hours, Deputy Justin Napolitano was conducting proactive patrol at the Love's Travel Stop located west of I-25 on Highway 56 within the Town of Berthoud. While this location is in Weld County, the Larimer County Sheriff's Office is contracted by the Town of Berthoud to provide law enforcement services within the town's limits, including the portion within Weld County. Napolitano was in full duty uniform and driving a marked patrol vehicle.

Napolitano was aware the Love's Travel Stop is a common location for illicit drug transactions and had previously made drug related arrests there. He observed a silver Mazda sedan pull up to a gas pump which was out of service as indicated by a yellow bag over the pump handle. The Mazda then moved to another pump after the driver observed Napolitano's marked patrol vehicle. The driver never exited the Mazda and eventually drove off without obtaining gas. Napolitano suspected that the Mazda was there for the purpose of a drug transaction.

As the Mazda left the area, a gray Chevrolet truck, driven by Justin Anderson, pulled into the lot, and stopped at a gas pump. Anderson did not exit the vehicle. Napolitano observed that the truck had a headlight out and did not have a front license plate displayed. After Anderson appeared to notice the patrol vehicle, Napolitano relocated to a more distant vantage point where he could continue to observe the truck with binoculars. According to Napolitano, Anderson never purchased gas, appeared to be frustrated, and eventually drove away. Napolitano suspected that Anderson was also there for the purpose of a drug transaction and perhaps intended to meet with the Mazda.

Napolitano followed Anderson as he exited the Love's parking lot and drove eastbound on Highway 56. According to Napolitano, Anderson was traveling at approximately 45 MPH in a 35 MPH zone. Napolitano observed Anderson navigate the roundabouts on Highway 56 at excessive speeds before turning onto northbound I-25 (mile marker 250).

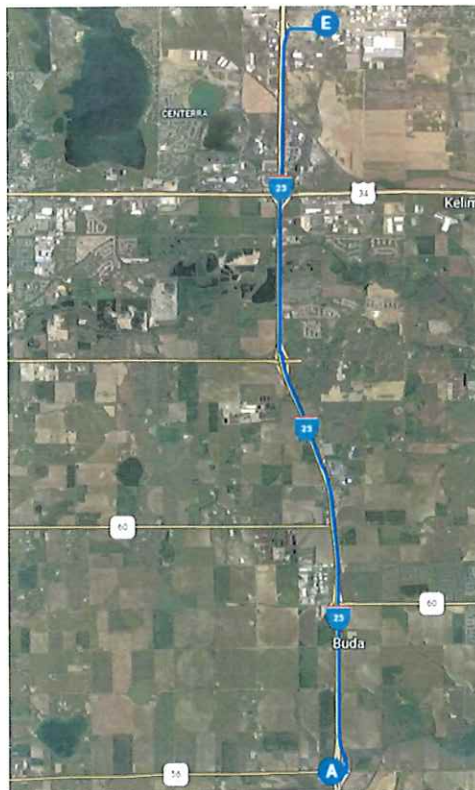
At 00:18 hours, Napolitano continued to follow Anderson on northbound I-25 and attempted to initiate a traffic stop for the headlight and speeding violations by initiating his lights and sirens. Napolitano advised dispatch via radio that he was contacting the vehicle for a headlight violation and described his reasons for suspecting that the truck was possibility at the Love's Travel Stop for a narcotics transaction. Anderson did not respond to Napolitano's lights and sirens and continued northbound on I-25 at speeds between 70 and 80 MPH. Anderson's driving grew erratic, and he engaged in various evasive maneuvers including "brake checking" Napolitano, passing vehicles on the right side, and acting as if he were going to exit before swiftly returning to the interstate - nearly striking a concrete barrier in the process.

After querying Anderson's license plate, the dispatcher advised there was an Attempt to Locate (ATL) associated with the truck out of Denver related to a separate eluding incident and listed the name Justin Anderson (the truck was registered to Justin Anderson's mother). Dispatch further advised that Justin Anderson had six active felony warrants related to larceny, dangerous drugs, and traffic violations (it was later learned that the warrants stemmed from Anderson absconding from a Larimer County Community Corrections facility in July 2022 - having been convicted and sentenced to that program).

At one point Napolitano was able to pull next to Anderson and radioed that the driver was a white male, without facial hair, and with blond spikey hair. The dispatcher advised that description was consistent with the ATL/warrants for Justin Anderson.

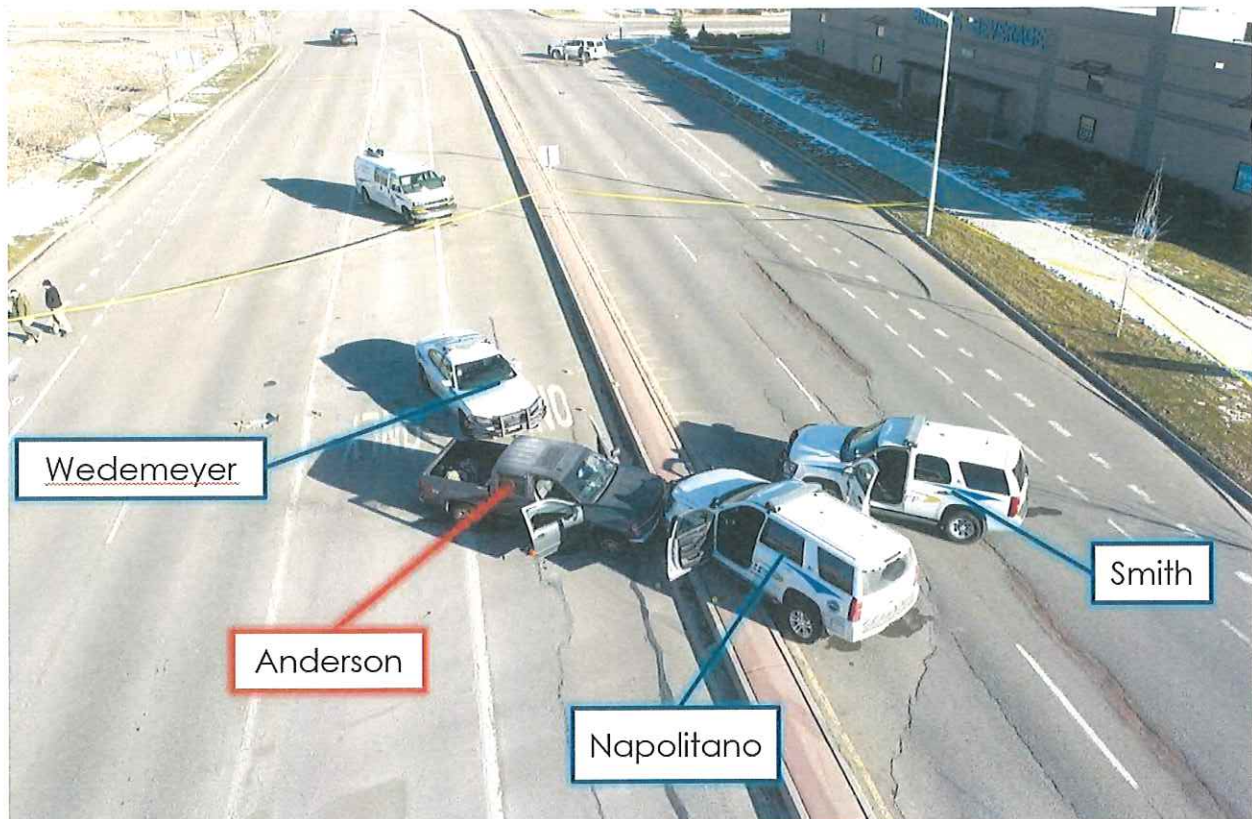
Additional deputies began to assist with the pursuit of Anderson including Deputy Jonathon Wedemeyer and Deputy Jamie Smith. Both Wedemeyer and Smith were wearing duty uniforms and driving marked patrol vehicles. Wedemeyer joined the pursuit and took over the function of providing updates on the radio and later assumed the primary pursuit position as his vehicle (Dodge Charger) was better suited to perform a Precision Immobilization Technique (PIT) maneuver if necessary.

At about 00:25 hours, Anderson exited I-25 at Crossroads Boulevard (I-25 exit 259) and traveled east on Crossroads. The I-25 portion of the pursuit traveled roughly 9 miles (exit 250 to exit 259) and roughly lasted 7 minutes (average speed 77 MPH).



(Aerial map of the route of the vehicle pursuit)

Anderson turned from eastbound Crossroads Boulevard onto northbound North Fairgrounds Avenue. As this occurred, Wedemeyer, now in the lead position, performed a Precision Immobilization Technique (PIT) on the Chevy truck, causing the truck to spin counterclockwise up over a large median. Deputy Wedemeyer was trained and certified in this technique. The truck came to rest facing to the southeast. Napolitano immediately pulled his patrol vehicle onto the median, face to face with the Chevy truck in order to “pinch” the vehicle from the front. Simultaneously, Wedemeyer, drove over the median to the north, made a U-turn, and then positioned the front of his vehicle behind the Chevy truck to “pinch” the truck from behind. Smith initially pulled her patrol vehicle alongside the driver’s side of Napolitano’s vehicle but quickly repositioned to the passenger’s side of Napolitano’s vehicle in preparation for a “high risk” stop.



(Aerial view of final vehicle positions in daylight)

At about 00:26 hours, as the vehicles came to rest, Napolitano was in an elevated position on the curb nose to nose with the Chevy truck with the red and blue lights activated along with the white lights.

Deputy Napolitano Description of Shooting

Napolitano opened his patrol vehicle door and drew his duty weapon. Napolitano described being able to clearly see into the truck through the windshield. Napolitano stated he could see Anderson’s back and saw Anderson reach behind the passenger seat with both hands. Napolitano stated that he believed Anderson was attempting to hide or ingest narcotics, or that Anderson was trying to obtain a firearm.

Napolitano described seeing Anderson's left hand appear and said Anderson was holding an unknown item which protruded under his left hand going forward. Napolitano then recognized the item to be what described as a gray "SKS style" rifle. Napolitano said that Anderson was holding a high-capacity banana style magazine in his right hand. Napolitano stated that believed the rifle caliber to be similar to a 7.62x39 and believed that such a rifle would defeat the soft armor he and the other deputies wore. Napolitano said at that point he no longer believed Anderson was trying to flee but had transitioned to fight mode. Napolitano said that Anderson brought the magazine up to the rifle and locked eyes with him. Napolitano saw Anderson "rocking" the magazine into the rifle like he was trying to load it. Napolitano advised that he knew as soon as the magazine was locked into action, which could take less than second, the rifle could be fired at him or other deputies on scene. Napolitano stated that he was convinced this was a deadly force situation and Anderson was a second away from shooting and killing him or other deputies.

Napolitano described that as Anderson was still actively trying to load the magazine, he put his red dot sight on Anderson's upper chest area and fired one round from his duty handgun. Napolitano said he believed his shot had an effect on Anderson as Anderson turned towards his right and leaned down towards the passenger seat.

Napolitano said he could still see the rifle in Anderson's hands and could see Anderson again trying to work the magazine into action. Because of this continuing threat, Napolitano stated he put the red dot on Anderson's nose and raised it slightly higher, to account for possible windshield deflection, and fired a second round at Anderson's head. Napolitano believed this shot also struck Anderson.

Napolitano described assessing the situation and said could see the rifle was still in Anderson's hand. Napolitano said the window had "spidered" open and he could not tell if Anderson was moving. Napolitano indicated that he suspected his rounds had an effect but was not certain the threat had ceased. He reported moving his red dot slightly up and to the right and then fired a third round at Anderson. The full sequence of Napolitano's three shots took approximately four seconds.

Napolitano said that as he stepped out of his vehicle, he was going to start with verbal announcements, but the incident evolved so quickly that he did not have time to give verbal announcements. Napolitano talked about shooting fundamentals and how controlled breathing was one of them and he did not want to be out of breath. Body camera footage shows that Napolitano did give a single command prior to firing, ordering Anderson to "show me your hands, do it now." Napolitano said that he considered less lethal options but that taser was the only less lethal option he had available and it would be ineffective due to Anderson being inside the vehicle.

Following Anderson's third shot, the rear tires of the Chevy truck began to spin rapidly, squeal loudly, and smoke. Napolitano said he believed Anderson had slumped against the accelerator as it appeared there was the full force of an adult leg pressing the accelerator pedal with the tires spinning as fast as they could. The front of the truck was in contact with both the roadway median and Napolitano's patrol vehicle as the tires were moving. Napolitano described moving to the west to get out of the direct line of the Chevy truck which was now drifting and in direct line to run him over if it dislodged.



(Napolitano body camera showing truck tires spinning and smoking)

Napolitano said he heard shots being fired and saw Wedemeyer in a firing stance pointed towards the truck. Napolitano indicated that he believed Wedemeyer was firing to try to stop the threat of the truck striking him.

Deputy Wedemeyer Description of Shooting

Deputy Wedemeyer indicated that after successfully conducting the PIT maneuver, making a u-turn, and stopping his patrol vehicle behind the truck, he exited to make his way towards Napolitano's vehicle. Wedemeyer stated that as he made his way around the driver's side of the truck, he felt objects hitting his face and realized it was glass from the windshield of the truck as Deputy Napolitano was firing his handgun into the windshield.

Wedemeyer then saw the truck accelerate and drift backwards into his patrol vehicle. Wedemeyer said he believed Anderson was attempting to flee and he saw Napolitano was out of his vehicle and in danger of being struck if the truck were to dislodge and drive forward. Wedemeyer stated that he feared Anderson was going to drive forward and run over Deputy Napolitano.

In response to this perceived threat to Napolitano's person, Deputy Wedemeyer fired his handgun at the driver's side window of Anderson's truck vehicle and then again at the driver's side door of the vehicle to attempt to shoot the suspect and prevent him from running over Deputy Napolitano. Deputy Wedemeyer's five shots took place over the course of approximately five seconds.



(Wedemeyer body camera showing perspective when firing)

Deputy Smith Description of Shooting

Deputy Smith stated that as she initially worked to position her patrol vehicle next to Napolitano, she looked up and saw Anderson struggling with something in the center console area of the truck. She recalled thinking about how she often struggled to get her rifle out of gun rack near that area of her patrol vehicle. She indicated that she first pulled up to south side of Napolitano's patrol vehicle but elected to back up and move to the passenger side of Napolitano's vehicle where she had a good view and better cover.

Smith said as she was getting out of her vehicle, she heard shots coming from both Napolitano and Wedemeyer. Smith aired shots had been fired over her radio and drew her duty weapon. Smith said she did not initially fire because she saw Anderson either dive or fall towards the passenger seat so she couldn't see him anymore and did not know where he was in the truck.

Smith described then seeing the truck accelerate rapidly and believed that Napolitano's vehicle was moving because of Anderson hitting the accelerator. Smith described the truck tires spinning so rapidly that it made the truck appear on fire due to the smoke. Smith stated that she thought Anderson was trying to kill Napolitano and perceived that if the truck slipped it could hit Napolitano or cause Napolitano's patrol vehicle to get shoved into him. Smith also expressed a fear that if the truck came towards her that she would get pinched between the patrol vehicles. Smith said she perceived both Napolitano and her life were at risk by Anderson accelerating his vehicle like that.



(Smith body camera showing perspective when firing)

Smith surmised that Anderson had to be somewhere in the driver's compartment in order to reach the accelerator and so she fired her weapon towards the bottom of the windshield attempting to get a sufficient angle into the driver's seat to stop the threat. She said she quickly fired two, or possibly three rounds. She said after that happened the truck tires stopped.

Post Shooting Response

Once the truck stopped moving, all three Deputies moved to the passenger side of Smith's patrol vehicle and gave verbal commands but did not get any response from Anderson.

Napolitano aired that shots had been fired and asked for medical to respond. Napolitano told Wedemeyer that Anderson had a rifle and Anderson was "down." Additional deputies then arrived and took over control of the scene and the involved deputies stood down. Napolitano advised Sgt. Thiemann that he believed Anderson was deceased but also still in possession of the rifle.

At about 00:39 hours, a contact team comprised of multiple deputies approached the truck and discovered Anderson to be obviously deceased with an apparent gunshot wound to his head. Anderson's feet were near the accelerator pedal on the driver's side of the vehicle and his torso was leaning across the passenger seat. Anderson was clutching a Ruger .22 caliber rifle in his left hand.



(Contact team body camera showing Anderson with rifle)

Paramedics were brought to the scene and confirmed Anderson to be deceased. CIRT investigators later reached Anderson's mother by phone notified her of Anderson's death.

Review of Body Worn Camera Footage

While all provided body worn camera footage was reviewed, most of the footage is not relevant to the issues surrounding the use of force in this case. For purposes of this review, body worn camera footage from those who were directly involved, including Deputy Napolitano, Deputy Wedemeyer, and Deputy Smith was closely examined and provided useful information.

1) A review of Deputy Napolitano's relevant body worn camera footage shows:

- I25 pursuit including radio traffic with dispatch and coordination with Wedemeyer (00:18:42 to 00:25:55)
- Announced PIT maneuver (00:25:57)
- Opens door, exits vehicle, takes cover behind door, draws firearm and points towards Anderson (00:26:08)
- Gives verbal command: "Show me your hands, do it now." (00:26:13)
- Fires 3 shots (00:26:17) (00:26:19) (00:26:21)
- Anderson truck is heard revving with sound of tires squealing (00:26:25)
- Moves behind patrol vehicles and joins other deputies on north side of Smith's patrol vehicle (00:26:36)
- Approaches drivers' side of truck before backing off (00:26:38)
- Large plume of smoke seen engulfing rear of truck (00:26:45)

- Truck tires stop spinning (00:26:50)
- Moves to waive off passing vehicles (00:26:57)
- Tells Wedemeyer “he’s got a rifle” (00:27:12)
- Contact team issuing commands to truck (00:30:16)
- Advises other units “he has a long gun in hand” and “he is down, sir.” (00:31:25)

2) A review of Deputy Wedemeyer’s relevant body worn camera footage shows:

- Joins pursuit and coordination (00:21:30 – 00:25:55)
- PIT maneuver (00:25:57)
- U-turn over median (00:26:03)
- Pull up to rear of truck (00:26:12)
- Exits patrol vehicle as Napolitano is firing first shot (00:26:17)
- Announces “shots fired” (00:26:19)
- Truck wheels start spinning and squealing (00:26:25)
- Fires 5 rounds into passenger side of truck (00:26:27 – 00:26:31)
- Truck seen drifting side to side (00:26:34)
- Deputy Smith observed with weapon drawn near passenger side of Napolitano’s vehicle (00:26:36)
- Aired “shots fired” (00:26:38)
- Shouts “watch out” as Deputy Napolitano begins to approach truck
- Tells other deputies to “back up” (00:26:48)
- Truck tires stop moving (00:26:50)
- Airs “holding on vehicle until more units arrive” (00:27:03)
- Napolitano says, “he’s got a rifle” (00:27:12)
- Airs “he has a long gun” (00:27:30)
- Additional units arrive (00:28:20)

3) A review of Deputy Smith’s relevant body worn camera footage shows:

- Stages exit 259 – joins pursuit (00:22:01 – 00:25:55)
- Airs “high risk stop at Nordy’s (00:26:02)
- Parks next to Napolitano’s patrol vehicle – driver’s side (00:26:07)
- Starts repositioning patrol vehicle (00:26:12)
- Parks next to Napolitano’s patrol vehicle – passenger side (00:26:19)
- Exits patrol vehicle – shots heard (00:26:21)
- airs “bravo 6 – shots fired (00:26:23)
- Anderson vehicle is heard revving with sound of tires squealing (00:26:25)
- Fires 2 rounds toward front of truck (00:26:27)
- Moves behind and around patrol vehicle near Wedemeyer (00:26:42)
- Airs “the driver is still accelerating into 31’s vehicle” (00:26:49)
- Airs “vehicle is smoking” (00:26:55)

- Airs “we can’t see the driver” (00:27:00)
- Airs “we need country road five shut down both ways” (00:27:11)
- Airs “all deputies are code-4, can’t see the suspect” (00:27:20)
- Take position of cover at patrol vehicle driver’s door (00:27:24)

Evidence Processing

Firearms and Truck

- Deputy Napolitano fired three 9mm rounds toward the windshield of Anderson’s truck. One round which was recovered from Anderson’s skull and is believed to be responsible for causing Anderson’s death was confirmed by CBI to have been fired by Napolitano.
- Deputy Wedemeyer fired five 45 ACP rounds towards the side of Anderson’s truck.
- Deputy Smith fired two 9mm rounds towards the front of Anderson’s vehicle.
- Investigators recovered all 10 spent cartridges fired by deputies.
- Eight bullet defects attributed to deputies were located on Anderson’s vehicle in the windshield and driver’s side panels.



(Bullet impacts to Anderson’s windshield)



(Bullet impacts to Anderson's driver's side)

- A Ruger 10/22 rifle was recovered from Anderson's left hand. The safety was in the "off" position.
- 1 round of 22 caliber ammunition was located in the chamber of the rifle.
- 23 rounds of 22 caliber ammunition were found in the magazine (25 round capacity).





(Photos of loaded Ruger 10/22 rifle recovered from Anderson)

- A likely bullet defect was located in the roof of Anderson's vehicle consistent with a round having been fired from inside the vehicle. Thorough investigation was unable to determine when this occurred, however it remains possible it could be the result of Anderson discharging the rifle during the altercation. No projectile was located.



(Possible bullet defect from round fired inside the truck)

- 49 suspected fentanyl pills were recovered from Anderson's left jacket pocket along with drug paraphernalia.

Anderson's injuries

At autopsy, it was determined that Anderson had three gunshot wounds: 1) mid center of his back (parallel to spine), 2) left side of his head above the ear, 3) left forearm above the wrist. Anderson also had a small bruise on the upper right side chest area - the approximate location where a projectile fragment was located. A bullet projectile was located inside the skull cap behind Anderson's right ear and is believed to be responsible for Anderson's death. Laboratory analysis confirmed that this bullet had been fired by Napolitano's duty weapon.

VII. CRIMINAL CHARGES THAT WOULD HAVE BEEN BROUGHT AGAINST ANDERSON

Had Justin Anderson survived, the evidence derived from the CIRT investigation would have led to the following charges being filed against him as a result of his conduct:

1. C.R.S. §18-3-102, 18-3-101, Criminal Attempt to Commit Murder in the First Degree, a class 2 felony: A person who, acting after deliberation and with the intent to cause the death of another person, takes a substantial step towards causing the death of that person or another person, commits Criminal Attempt to Commit Murder in the First Degree.
2. C.R.S. §18-3-202, First Degree Assault – Threaten Peace Officer, a class 3 felony: A person with intent to cause serious bodily injury upon the person of a peace officer, threatened with a deadly weapon a peace officer engaged in the performance of his duties, and the person knew, or reasonably should have known, that the victim was a peace officer acting in the performance of his duties commits First Degree Assault – Threaten Peace Officer.
3. C.R.S. §18-3-206, Felony Menacing, a class 5 felony: A person who, by any threat or physical action unlawfully and knowingly places or attempts to place another person in fear of imminent serious bodily injury by the use of a firearm commits Felony Menacing.
4. C.R.S. §18-9-116.5, Vehicular Eluding, a class 5 felony: A person who, while operating a motor vehicle, knowingly eludes or attempts to elude a peace officer also operating a motor vehicle, and who knows or reasonably should know that he or she is being pursued by said peace officer, and who operates his or her vehicle in a reckless manner, commits vehicular eluding.
5. C.R.S. §18-18-403.5, Possession of Controlled Substance – Fentanyl, a class 4 drug felony. A person who, unlawfully and knowingly possess a material, compound, mixture, or preparation that weighed more than one gram and contained any quantity of fentanyl commits Possession of a Controlled Substance – Fentanyl.

VIII. CONCLUSIONS

The CIRT investigation comported with both the letter and the spirit of §16-2.5-301, C.R.S. The investigation was thorough, objective, well-resourced, and all relevant materials were provided in a timely manner. Finally, the investigation yielded ample evidence from which factual and legal conclusions could be reached.

As stated above, in applying the law to the facts in this incident we must ask the following questions:

1. Did Deputies Justin Napolitano, Jonathon Wedemeyer, and Jaime Smith reasonably believe that firing their weapons into Anderson's truck was necessary to defend themselves or others from what each reasonably believed to be the imminent, or continued, use of physical force by Anderson?
2. Would nonviolent means have been ineffective in effecting an arrest, preventing an escape, or preventing an imminent threat of injury to the peace officer or another person in this situation?
3. Did the involved deputies identify themselves as peace officers and give a clear verbal warning of the intent to use their firearm, with sufficient time for the warning to be observed, and if not, were they exempted from having given that warning because it would have unduly placed her or her fellow officers at risk of injury or would have created a risk of death or injury to other persons?
4. Did the involved deputies ensure that assistance and medical aid were rendered to Anderson as soon as was practicable?
5. Did the involved deputies or fellow deputies ensure that any identified relatives or next of kin of Anderson, if he sustained serious bodily injury, were notified as soon as practicable?

To avoid redundancy, questions 1 and 2 will be addressed together with respect to each involved deputy. Subsequently, questions 3, 4, and 5 will be addressed independently.

(Questions 1 and 2) All three deputies had both a reasonable belief that shooting was necessary, and that nonviolent means would have been ineffective in stopping Anderson.

Deputy Napolitano

Deputy Napolitano had multiple reasons to believe that Justin Anderson was presenting a danger to the public. Napolitano observed behavior at the Love's Travel Stop that was indicative of possible narcotics activity. Dispatch provided information that Anderson was wanted on multiple warrants and was wanted for questioning in a recent eluding incident. Anderson engaged in a lengthy vehicle pursuit, where he exhibited reckless and concerning driving necessitating a PIT maneuver to end the pursuit.

As Napolitano put his patrol vehicle in park, opened his door, and took cover behind the door of his patrol vehicle, he had a clear view of Anderson through the windshield. Napolitano described Anderson's actions and how they presented an immediate threat to his life. This includes how Anderson reached backwards, produced an item that Napolitano recognized to be a rifle, and attempted to load a high-capacity magazine into the rifle. Napolitano articulated that he knew as soon as the magazine was locked into action, in less than second, the rifle could be leveraged against him or other deputies. Napolitano stated that he was convinced this was a deadly force situation and Anderson was a second away from shooting and killing him or other deputies. He also articulated a belief that his body armor would be ineffective against what he perceived to be something similar to a 7.62x39 caliber rifle. Napolitano articulated specifically the need for each shot that he took, including how Anderson continued to manipulate the rifle following the first shot.

The physical evidence recovered on scene confirms not only Napolitano's reasonable perception of danger to his life, but also the actual danger he faced. Anderson was in fact armed with a rifle, with a round in the chamber, with the safety off, and with a high-capacity magazine inserted. While the evidence is inconclusive and Napolitano did not report witnessing it, it is possible that Anderson discharged the rifle during the interaction based upon the apparent bullet defect in the interior roof. Regardless of whether Anderson actually managed to fire his rifle, he had the full capacity to do so and his actions – bringing the rifle from the rear of the vehicle and inserting the magazine – strongly indicate that is what he intended to do.

The evidence shows that Deputy Napolitano fired the shot that killed Anderson and therefore used both physical force and deadly physical force. The only reasonable conclusion based on the information available is that Deputy Napolitano was justified as he reasonably believed firing at Anderson was necessary to defend himself from what he reasonably believed to be the imminent, or continued, use of physical force capable of causing death of serious bodily injury.

Deputies Wedemeyer and Smith

Deputies Wedemeyer and Smith had the same background information based upon the radio traffic associated with the vehicle pursuit of Anderson. They knew that Anderson was suspected of drug activity, had multiple active warrants, and was attempting to elude capture. Following the PIT maneuver, each worked to position their patrol vehicles in a tactically advantageous way. Wedemeyer had to make a U-turn and "pinched" Anderson's truck from behind. Smith initially pulled up on the driver's side of Napolitano and then repositioned to his passenger's side. Smith described that as she maneuvered, she saw Anderson struggling with something in the center console area of the truck and she associated the action with how she often struggled to get her rifle out of gun rack near that area of her patrol vehicle.

As Wedemeyer and Smith each exited their own patrol vehicle, they observed Deputy Napolitano's patrol vehicle directly in front of Anderson's truck and that Napolitano was shooting at Anderson. Just as Napolitano fired his third (and final) shot, they each saw Anderson's truck accelerate rapidly, with his rear tires spinning and squealing, and his truck beginning to move. Wedemeyer

fired first, which Smith recognized, and she then fired herself after Anderson dropped out of her view but the truck continued to accelerate and present a clear danger.

In firing, Wedemeyer and Smith each reasonably perceived that Anderson was in control of the truck and was attempting to hit Napolitano. Both expressed concern for Napolitano's life and Smith also expressed concern for her own life, stating that if the truck came towards her that she would get pinched between the patrol vehicles.

The body camera footage from all three deputies corroborates the reasonable interpretation that Anderson was attempting to use his truck as a weapon, as the tires on the truck spin rapidly, squeal loudly, and produce significant smoke, as the truck jerks and drifts from side to side. Based upon the positioning of Deputy Napolitano's vehicle directly in front of the truck with him initially positioned at his driver's side door, Wedemeyer and Smith reasonably feared for his safety.

While it is unclear if Anderson intentionally placed his foot on the accelerator or if his foot otherwise landed and remained on the accelerator after being shot by Napolitano, Wedemeyer and Smith each drew a logical conclusion that Anderson was in control of the vehicle and attempting to harm Napolitano. Given the dynamics of the situation with the truck's tires spinning at maximum speed there was no reasonable nonviolent alternative available to disable the truck or otherwise prevent the imminent threat of injury to Napolitano.

Deputy Wedemeyer and Deputy Smith each intentionally fired their weapons at Anderson. The evidence indicates that neither fired the shot that killed Anderson, and therefore they did not use deadly physical force. A review of the totality of the evidence leads to the conclusion each of the deputies' use of force was both objectively and subjectively reasonable under the circumstances. Given the seriousness of the perceived threat posed, my conclusion would be the same even if they had used deadly physical force.

(Question 3) All three deputies were exempted from giving the verbal warning because it would have unduly placed him or her fellow officers at risk of injury or would have created a risk of death or injury to other persons.

Each Deputy was in uniform and driving a marked patrol vehicle. Anderson had led deputies on nine-mile pursuit lasting approximately seven minutes with emergency lights and sirens visible and audible the entire time. Anderson would have clearly been aware that law enforcement was attempting to contact him. Once the PIT maneuver was executed, circumstances rapidly evolved with little or no opportunity for meaningful verbal warnings. Deputy Napolitano was faced with a rifle being loaded with a high-capacity magazine at close range and accurately assessed he may have been only a second from being shot. This scenario reasonably exempts him from giving a warning.

Despite not having reasonable time to issue the full statutory warning, as Napolitano opened his door and took a position of cover he ordered Anderson to "show me your hands, do it now." Although Napolitano did not recall giving this order when interviewed, body worn camera shows he did. As Wedemeyer and Smith each exited their patrol vehicles, they were immediately

confronted with the reality that Napolitano was firing, the truck was posing an immediate danger, and they had no time to issue warnings before firing themselves.

(Question 4) Deputies ensured that assistance and medical aid were rendered to Anderson as soon as was practicable.

Medical assistance was requested to respond to the scene immediately following the shooting. Safety concerns and the need for a contact team to ensure Anderson no longer presented a threat, given that he was known to be armed with a rifle, created an unavoidable circumstance where immediate medical care was not possible. The contact team worked diligently and safely to approach Anderson. When they were able to access the interior of the truck, Anderson was obviously deceased and there is no indication that more immediate medical attention would have altered the outcome given the nature of the injuries. Thus, the Larimer Sheriff's Office overall response was within statutory requirements to render medical aid and to the best of their ability given safety concerns.

(Question 5) Investigating peace officers ensured that any identified relatives or next of kin of Anderson were notified of his injuries as soon as practicable.

Other peace officers involved in the investigation contacted Anderson's mother by telephone as soon as practicable.

VII. FINAL CONCLUSIONS

There will be no criminal charges filed relating to this incident. Mr. Anderson is deceased and cannot face charges for his criminal actions.

The totality of the evidence presented through the CIRT investigation reveals that given the actual and perceived circumstances faced by Deputies Justin Napolitano, Jonathon Wedemeyer, and Jaime Smith on November 21, 2022, near North Fairgrounds Avenue north of East Crossroads Boulevard in Windsor, Colorado, each was justified in discharging their firearms and reasonable in their use of deadly force and non-deadly force, respectively. As a result, I find that no charges can, or will, be brought against any of the involved deputies.

I thank the entire Critical Incident Response Team for their professionalism, hard work, and diligence in this investigation.

Gordon McLaughlin,

 2.9.23
District Attorney
Eight Judicial District Attorney